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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

Federal Communications Commission
 Office of the Secretary

Petition for Declaratory Ruling
 That Lenders May Take a Limited
 Security Interest in an FCC License

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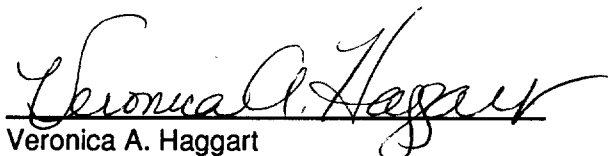
MMB File No.
 910221A

PETITION TO ACCEPT LATE-FILED COMMENTS

Motorola Inc. respectfully requests that the FCC accept late-filed reply comments in the proceeding captioned above. The information provided in the attached replies will provide information useful to the Commission in its deliberations concerning the issue of a limited security interest in licenses. Specifically, the attached discussion focuses on ramifications of the proposal as applied to cellular telecommunications. This is an important aspect of the proceeding which has not heretofore been addressed in detail.

No party will be harmed inasmuch as the delay requested is for only a few working days, and all parties have been served copies of the attached reply comments. The Commission's processes will not be hampered at the petition stage of the proceeding. The delay was caused by the unavailability of key persons during the final coordination of these replies. Every effort was made to minimize the amount of delay involved. Wherefore, we respectfully request acceptance and consideration of these reply comments.

Respectfully submitted,



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REPLY COMMENTS
MMB FILE NO. 910221A

Federal Communications Commission
Office of the Secretary

In this proceeding, the petitioner has requested the Commission to issue a declaratory ruling that a third-party creditor may take a limited security interest in an FCC license. The petition emphasizes that, under its proposal, several important considerations would govern:

- (1) there would be full compliance with the requirements of the Communications Act;
- (2) assignment or transfer of control of the license would remain subject to prior Commission approval;
- (3) subject to FCC approval, a lender holding a security interest in an FCC license would be permitted, in a default situation, to force a "public or private sale" of the licensed facility.

The petition describes the state of "current paralysis" in broadcast lending and anticipates that the requested declaratory ruling would help establish a climate in which lenders would be far more amenable to financing telecommunications properties whose values, at the present time, have either stabilized or have even decreased.

An analogous situation exists in the rural cellular markets. There presently is a general lack of capital available for these markets. The scarcity is due to the relatively small size of these markets, as well as the general decline in the nation's economic climate. Equipment vendors are virtually the only source of capital available to those awarded construction permits for the cellular Rural Service Areas (RSAs).

Allowing lenders to take a security interest in a cellular license would contribute substantially to the expeditious provision of cellular service in these rural areas. Creditors are understandably reluctant to finance many of the more remote RSAs because the projected revenue base of some of these markets makes them riskier than the larger metropolitan and suburban areas.

Creditors are legitimately concerned that a number of these rural markets may go into default. In such a case, the ordinary scenario is for a creditor to seek to protect, to the extent possible, its loan. Typically, a creditor would foreclose on the equipment of the system, remove it from the premises, and take steps to liquidate the assets. This recovery of investment is partial at best, since the equipment standing alone is perceived as used and of little value if not associated with a construction permit or license. The creditor is essentially doing nothing more than cutting its losses. Faced with these meager prospects, creditors are simply walking away from requests to finance a number of the RSA markets.

The default scenario described above is unnecessary and is clearly against the public's interest in receiving uninterrupted cellular service. This public interest would better be served by a policy which would also encourage lenders to finance these systems: if a security interest is permitted in the license (as well as in the underlying equipment and facilities), a very different scenario would unfold. The vendor/lender would then have the ability to present to the Commission (for its prior approval) an alternate licensee willing to purchase the

cellular system, keep it operational in the interim, and to make arrangements in the long run for continuous service.¹

Maintaining quality cellular service to the public would be a high priority for a creditor allowed to hold a security interest in the license, because, in a default situation, the creditor's only realistic prospect for recovering its investment may be to sell the system as a going concern along with the FCC license. Moreover, the public would be assured of continuing to receive quality cellular service in the future, because the Commission would review in advance any proposed purchaser and make a determination whether this proposed assignee is qualified to be a common carrier licensee.²

It will contribute to the Commission's goal of ensuring nationwide availability of cellular service if lender's are allowed to take a limited security interest in the license. This policy will facilitate the availability of adequate financing for license holders. Although much financing was available during the heady days when the larger urban cellular markets were being built and financed, the same bullish expectations are not attached to the smaller markets which remain to be built - moreover, the nation's general economic downturn has had its own impact on the cellular financing picture.

A restrictive policy which allows creditors to take a security interest on the equipment alone will not adequately collateralize the amount of debt involved. Typical financing packages cover not only the cost of the cellular equipment but also include working capital for the first few years of operation. Lenders would be more likely to provide this type of financing if the cellular license were added to the list of collateral. The lender's rights to the license would of course be subject to requesting and obtaining Commission approval for any proposed disposition to a qualified third party licensee. These restrictions are of course fully appropriate and necessary to the Commission's regulatory oversight.

The comments which were filed earlier in this proceeding furnished ample support for the petition. The comments of Morrison & Foerster, for example, pointed out that the petition is consistent with the Communications Act, which has been and should continue to be interpreted in a manner hospitable to the business needs of the regulated entities.³ The commenter further observed that the problems described in the petition extend beyond the broadcast arena to include cellular, paging, and emerging radio-based technologies. Indeed, the problem may work

¹It is to be emphasized that such creditors are in no way motivated by a desire to acquire cellular properties. Certainly, if creditors sought entry into this service, they would select the more attractive RSAs, not the ones which fell figuratively into their hands in a default situation.

²The Commission's rules for assignments and transfers of control would apply. See 47 CFR 22.39. These rules contemplate procedures involving involuntary assignments and transfers, which would apply in a default situation. None of these regulatory safeguards would be restricted by the security proposal discussed herein.

³See Comments, Morrison & Foerster, pp. i, ii, 1 - 3, MMB File No. 910221A.

to the particular disadvantage of emerging technology-based companies which may be unable to qualify for credit by documenting a successful operating history. Without the license to offer as collateral, newer ventures may be unable to obtain adequate financing.⁴ This is certainly the case with many RSA construction permit holders currently coming on line. It may well be the case in the future with a number of Personal Communications Service (PCS) providers. The proposed policy would facilitate the Commission's encouragement of technological innovation while allowing the retention of all regulatory safeguards contemplated by the Communications Act.

The Wireless Cable Association describes the acute need for financing in that particular industry to become more readily available. The Association states that the declaratory ruling, if broadened to include non-broadcast radio services, would advance the Commission's efforts to introduce competition in the coaxial cable industry.⁵

The comments of Santarelli, Smith & Carroccio support the petition and urge that, in order for such a declaratory ruling to be meaningful, the Commission should specify the mechanisms and procedures to be used in the perfection of, and execution upon, such security interests.⁶ These procedures should not seek to make the Commission a national recorder of deeds, should not supplant the commercial codes adopted by the various States, and should continue to defer to the courts for resolution of disputes involving conflicting creditors' claims.

Bank of America filed comments indicating that the problems described in the petition apply equally to cellular financing, and that "the FCC should establish procedures to allow the secured creditor to exercise its borrower's rights to transfer the FCC license, if the borrower defaults on its credit obligations."⁷

Heller Financial, Inc., points out that a reduction in available funds can lead to service interruptions and terminations, can reduce the quality of service to the public, and can interfere with technology deployment.⁸

CONCLUSIONS

The petitioner correctly stated the need for a declaratory ruling that it is permissible

⁴See Comments, Morrison & Foerster, supra, note 3, at p. 4.

⁵See Comments, Wireless Cable Association, File No. MMB-910221A, pp. 1 - 3.

⁶See Comments, Santarelli, Smith & Carroccio, MMB File No. 910221A, pp. 9 - 10.

⁷See Comments, Bank of America, p. 3. See also attached letter, dated April 1, 1983, to Marion MacRae, Esq.

⁸See Comments, Keller Financial, Inc., MMB File No. 910221A, pp. 21 - 24.

for third parties to take a limited security interest in an FCC license. Such a security interest would of course be subject to (and fully consistent with) the Communications Act and all pertinent FCC Rules and Regulations concerning the Commission's prior approval of any assignments or transfers of authorization.


The comments were unanimously in support of the petition and further explained that the current practice of prohibiting such security interests can (and has) contributed to the unavailability of capital which is necessary for telecommunications systems to be built and for service to be provided to the public.

The same considerations apply fully to the rural cellular market, where lenders are extremely reluctant to provide financing which will be seriously under-collateralized unless the Commission permits a limited security interest to be taken in the license.

The requested declaratory ruling would retain all the Commission's current licensing oversight, would be consistent with the Communications Act, and would contribute to the wider availability, not just of current services (such as broadcasting and cellular) but also of future emerging non-broadcast services which the Commission also seeks to encourage.

CERTIFICATE OF SERVICE

I, Alice M. de Séve, a secretary with Motorola Inc., do hereby certify that on this 13th day of May, 1991 a copy of the foregoing "Petition to Accept Late-Filed Comments" was sent to each of the following by first-class mail, postage-prepaid except where service by hand is indicated(*):



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